

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

8. Section 400.172 is revised to read as follows:

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in § 400.170(d) may qualify if, in addition to the requirements of § 400.170 (a), (b), (c) and (e), the insurer:

(a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

§ 400.173 [Reserved]

9. Section 400.173 is removed and reserved.

§ 400.174 [Amended]

10. In § 400.174, the words "financial statement" are revised to the plural form "financial statements".

§ 400.175 [Amended]

11. In § 400.175(a), the words "financial statement" are revised to the plural form "financial statements".

§ 400.177 [Reserved]

12. Section 400.177 is removed and reserved.

Done in Washington, D.C., on November 9, 1995.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 95-28558 Filed 11-22-95; 8:45 am]

BILLING CODE 3410-FA-P

Agricultural Marketing Service**7 CFR Part 945**

[FV95-945-2IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes pack requirements and establishes marking requirements for Idaho-Eastern Oregon potatoes. These changes are expected to improve the marketing of such potatoes and increase returns to producers. These changes were recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program. The interim final rule also includes several conforming changes which recognize that the marketing order regulates shipments of potatoes within the production area, as well as shipments outside the production area.

DATES: Effective November 24, 1995. Comments which are received by December 26, 1995 will be considered prior to the issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; FAX: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724 or FAX (503) 326-7440; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 205-2829, or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing

Order No. 945 (7 CFR part 945), as amended, hereinafter referred to as the "order," regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order and approximately 1,600 producers in the production area. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have

been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of potato handlers regulated under the order may be classified as small entities. The majority of producers may also be classified as small entities.

This rule would amend § 945.341 to: (1) Require that all cartons (except when used as a master container) be conspicuously marked as to potato size; (2) require for all varieties that when 50-pound containers of Idaho-Eastern Oregon potatoes are marked with a count, size, or similar designation, the potatoes contained therein must meet the count, average count, and weight ranges established within the handling regulation; and (3) specify that Idaho-Eastern Oregon potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better.

These changes were recommended by the Committee at its August 9, 1995, meeting. The Committee's recommended revisions are authorized pursuant to §§ 945.51 and 945.52 of the order. This action is expected to improve the marketing of Idaho-Eastern Oregon potatoes and improve returns to producers.

A recent order amendment (60 FR 29724, June 5, 1995), added authority to § 945.52 to require accurate and uniform marking and labeling of containers in which Idaho-Eastern Oregon potatoes are shipped. With this authority in the order, the Committee recommended requiring that all cartons shall be conspicuously marked as to potato size; i.e., marked so that the potato size is noticeable on the carton. The Committee recommended this requirement to reduce confusion in the marketplace as to the size of the potatoes in cartons. While most cartons already are marked as to size, the Committee reports that there have been many instances when product size in unmarked cartons has been misrepresented through the marketing chain (e.g., 100-count size potatoes in 50-pound cartons being represented as 90-count size). This type of misrepresentation can create market confusion, damage buyer acceptance, and depress prices.

In addition, this action changes the pack requirements in § 945.341(c). For several decades, the handling regulation has specified that when long varieties of potatoes in 50-pound containers are marked with a count, size or similar designation, the potatoes contained therein must meet the count, average

count and weight ranges established within the handling regulation. This has been beneficial to buyers and sellers by reducing market confusion and misrepresentation related to the marking of count and weight ranges on 50-pound containers. In recent years, there has been an increase in the number of plantings of round varieties grown in the Idaho-Eastern Oregon production area. Therefore, the Committee recommended that this pack requirement, which the industry has found to be beneficial for long varieties, be extended to all varieties.

The second aspect of the change in pack requirements recommended by the Committee is the establishment of a requirement that all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when used as a master container) shall be U.S. No. 1 grade or better. Currently, the handling regulation requires this of potatoes packed in 50-pound cartons (except when used as a master container). Some buyers have indicated that a smaller carton size is more desirable than the currently used 50-pound carton. These buyers indicate that they need a smaller carton that takes up less storage space and is easier to lift and handle.

However, these buyers still want to be provided with the same quality of potatoes; i.e., U.S. No. 1 grade or better. Currently, the grade of potatoes packed in other than 50-pound cartons must be U.S. No. 2 grade or better. This change in the handling regulation reflects the industry's desire of providing a high quality product to users of potatoes, regardless of carton size desired.

Another order amendment revised § 945.9 to broaden the scope of the order to authorize regulating shipments of potatoes within the production area, as well as shipments outside the production area. Conforming changes are made in § 945.341(d)(3) regarding inspection and certification procedures so these procedures cover all shipments of potatoes, not only shipments made outside the area of production.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give

preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) the 1995-96 shipping season has begun and these changes should apply to as much of that season as possible; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 945.341 is amended by:

(1) Removing the words "On or after August 16, 1982," in the introductory text,

(2) Removing in paragraph (d)(3) the words "outside the area of production" in the first and second sentences and the words "outside the production area" in the last sentence, and

(3) Revising the heading of paragraph (c), the first sentence of the introductory text of paragraph (c)(1), paragraph (c)(2), and adding a new paragraph (c)(3) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(c) *Pack and marking.* (1) When 50-pound containers (except master containers) of potatoes are marked with a count, size or similar designation, they must meet the count, average count and weight ranges for the count designation listed below.

* * * * *

(i) * * *

(ii) * * *

(2) Potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better. However, potatoes of U.S. Extra No. 1 Grade shall be no smaller than 110 size nor larger than 60 size.

(3) Size shall be conspicuously marked on all cartons (except when

used as a master container) consistent with § 51.1545 of the United States Standards for Grade of Potatoes (7 CFR 51.1540–51.1566).

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Dated: November 20, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95–28695 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 966

[Docket No. FV95–966–2IFR]

Tomatoes Grown in Florida; Exemption of Specialty Packed Red Ripe Tomatoes From Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of specialty packed red ripe tomatoes from the container net weight requirements in the Florida tomato handling regulation. This exemption was unanimously recommended by the Florida Tomato Committee which locally administers the marketing order. This rule will allow handlers to ship specialty packed red ripe tomatoes in containers with different net weights than those currently authorized under the order. This will facilitate the movement of such tomatoes, further the development of this relatively new market, and is expected to improve returns to producers of Florida tomatoes.

DATES: Effective November 24, 1995; comments received by December 26, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883–2276; telephone: 941–299–4770, or FAX: 941–299–5169; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration

Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2431, or FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of tomatoes who are subject to

regulation under the marketing order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels outside of the regulated area are required to meet certain handling requirements specified in § 966.323. Current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2⁸/₃₂ inches in diameter. Pack and container specifications are also in effect. In addition, all lots are required to be inspected and certified as meeting these grade, size, pack and container requirements by authorized representatives of the Federal or Federal-State Inspection Service. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the panhandle. The production area is part of the regulated area.

This interim final rule revises paragraph (d) of § 966.323 to allow handlers to ship specialty packed red ripe tomatoes exempt from the container net weight requirements in § 966.323(a)(3)(i) and defines such tomatoes in paragraph (g) of § 966.323. This exemption is the same as the exemption currently provided for yellow meated tomatoes in paragraph (d) of § 966.323. The specialty packed red ripe tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, container marking, condition and inspection requirements. The Florida Tomato Committee (committee) met September 7, 1995, and unanimously recommended this exemption.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) currently requires certain types of tomatoes packed by registered handlers to be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of the contents cannot be less than the designated weight and cannot exceed the designated weight by more than two pounds. Section 51.1863 of the U.S.